

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 85 OF 2004
IN
WRIT PETITION NO.7103 OF 2002

SULTAN GULAMALI CURRIM
CHATRIWALLA

...Petitioner.

V/s

1.Minguel F.D'Costa (deceased)
2.Conceicao M.F.D'Costa
3.Master Melvin M.F.D'Costa
minor through his mother
Conceicao M.F.D'Costa,
Both residing at Sun Beam
Chamber, C/o. Court Receiver,
High Court, Bombay 400 023

...Respondents.

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Mr. Sultan Gulamali Currim Chatriwalla, Petitioner,
present in person.

Mr. Ashok Jain i/b Mr. A.V. Jain & Associates for
the respondents.

CORAM: V.M.KANADE,J.

DATE: 15th September, 2004

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1. Heard the party in person and the learned Counsel
appearing on behalf of the respondents.

2. This Review Petition is filed by the party in person challenging the Order dated 08/03/2004 passed by this Court in Writ Petition No.7103 of 2002 whereby the Order passed by the City Civil Court has been confirmed. The Review Petition was filed in which it is alleged that though the order was passed earlier by

Shri Justice R.M. Lodha and it was confirmed by the Apex Court, the Order in review has been passed without taking into consideration the order of the Apex Court and the order of Shri Justice R.M. Lodha.

3. When the Review Petition was filed, both these orders were not annexed to the Review Petition and, therefore, the petitioner was directed to annex these two orders to the Review Petition. Petitioner was, however, not represented by any advocate. However, on the last occasion, his previous advocate Mr. Nasrat Shah appeared on his behalf and when this lacuna was pointed out to him, he informed the petitioner and requested him to annex these two orders. Petitioner is 85 years old and is appearing in person. Today, he is tendering the two orders referred to in the Review Petition viz. the order passed by Shri Justice R.M. Lodha and the order passed by the Apex Court.

4. After the delay in the Review Petition was condoned, I tried to explore the possibility of settlement between the parties as the petitioner's case is that the premises in question were being used by the husband of the respondent who is since deceased as his driver and, after his death, his wife is

occupying the premises. In spite of best efforts being taken by this Court, the parties were not in a position to settle the matter. and, therefore, the Review Petition was kept for admission.

5. So far as the two orders which are relied upon by the petitioner are concerned, the order of Shri Justice R.M. Lodha was passed in C.R.A. No.473 of 2000 dated 03/04/2000. By the said order, the order passed by the Trial Court in Chamber Summons No.1011 of 1999 in Suit No.5852 of 1996 was stayed and the respondent No.1 was directed to deposit the entire arrears of royalty within six weeks. Pursuant to this order, the said amount was deposited by the respondents with the Court Receiver. Thereafter, in view of the amendment to the Civil Procedure Code, the C.R.A. was not maintainable and, therefore, liberty was granted to the petitioner to file a Writ Petition. Accordingly, Writ Petition was filed by the petitioner which has been finally decided by this Court by Order dated 08/03/2004.

6. So far as the judgment of the Apex Court is concerned, the Apex Court has observed that since the arrears of royalty has been deposited by the respondents, the High Court was directed to

expeditiously hear the pending appeal. Therefore, the statement of the petitioner that the order of Shri Justice R.M. Lodha was confirmed by the Apex Court is not correct. I would like to observe that the said two orders on which reliance is placed by the petitioner in the Review Petition were not referred to in the Writ Petition or annexed to the Writ Petition nor any reliance was placed by the Counsel who appeared on behalf of the petitioner at the time of final hearing of the Writ Petition. No reference is also found in the order passed by the learned Judge of the City Civil Court while deciding the Chamber Summons to these two orders which are now referred to in the Review Petition.

7. Under these circumstances, no case is made out for review of the order. Review Petition is, therefore, rejected.

8. Petitioner is a Senior Citizen and is 85 years old. While disposing of the main Writ Petition, this Court has directed that the suit filed by the respondents in the Small Causes Court and the suit by the petitioner herein in the City Civil Court should be disposed of within a time bound schedule. Accordingly the Small Causes Court decided RAD Suit in

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favour of the respondents while RAN application filed by the respondents is dismissed in favour of the petitioner. Appeal preferred by the petitioner against the decree passed in RAD Suit is pending before the Division Bench of the Small Causes Court.

Hearing of the appeal is expedited. Appeal to be heard and decided within a period of four months from today.

9. Similarly, City Civil Court is expected to decide the preliminary issue on/or before 30/10/2004. So far as the amount which is deposited by the respondents in the Court Receiver's Office is concerned, the same may be invested in a Nationalised Bank and the respondents and the petitioner would not be permitted to withdraw the said amount till the hearing and final disposal of the Suit in the City Civil Court and the appeal in the Small Causes Court.

10. With these directions, Review Petition is disposed of.

11. The learned Counsel appearing on behalf of the respondents seeks stay of this order. Application for stay is, however, rejected.

12. All concerned to act on the copy of this order
duly authenticated by the Sheristedar of this Court.

V.M. KANADE, J.